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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/026,224	12/19/2001	Mogens Bugge	P/1094-129	4362
2352	7590	01/28/2004		
OSTROLENK FABER GERB & SOFFEN 1180 AVENUE OF THE AMERICAS NEW YORK, NY 100368403			EXAMINER OROPEZA, FRANCES P	
			ART UNIT	PAPER NUMBER
			3762	10

DATE MAILED: 01/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/026,224

Applicant(s)

BUGGE ET AL.

Examiner

Frances P. Oropeza

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11/17/03 (Amendment).
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 3,5,7-9 and 11-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,6,10 and 24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Restriction/ Election***

1. In response to the restriction requirement, the Applicant elected the fifth species of Figure 8 in Paper No. 6, filed 6/24/03, and stated that at least claims 1-4, 6 and 10 are readable on the elected species. Upon review by the Examiner, it appears claim 3 is not readable on Figure 8 as the hydraulic motor is not read to be connected to more than one pulsating pressure source, hence, claim 3 is withdrawn from consideration being directed to a non-elected invention. See 37 CFR .142(b).

***Response to Arguments***

2. The Applicant's arguments filed 11/17/03 are convincing hence the rejections of record are withdrawn and a new rejection of record established in the subsequent paragraphs.

***Claim Rejections - 35 USC § 112***

3. Claim 10 stands rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 10, "the piston rods" lack antecedent basis.

Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

4. Claims 1, 2, 4, 6, 10 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heimes et al. (US 3966358) in view of Leachman, Jr. (US 3911897) and further in view of Blackshear et al. (US 3667069).

Heimes et al. teach a blood pump assembly comprising a hydraulic motor (4) that uses a hydraulic/ fluid pressure source (5) to power a piston pump ((figures 1 and 2; col. 1 @ 20-55; col. 2 @ 17-34 and 58-66; col. 3 @ 2-12 and 27-56; col. 4 @ 28-56; col. 6 @ 45-61).

As discussed in the previous paragraph of this action, Heimes et al. disclose the claimed invention except for the blood pump being implantable.

Leachman, Jr. teaches cardiac prosthetic device implementation using an implanted pumping device for the purpose of providing assistance to a weak or diseased heart. It would have been obvious to one having ordinary skill in the art at the time of the invention to have used an implanted pumping device in the Heimes et al. system in order to avoid the inconvenience of an external pumping system that must be continuously physically transported and to avoid the potential infections associated with tubes that traverse the skin, connecting an external device with the cardiac vessels (figure 1; col. 1 @ 9-25; col. 2 @ 26-32; col. 3 @ 9-14).

As discussed in the previous three paragraphs of this action, modified Heimes et al. disclose the claimed invention except for the fluid pressure source being pressurized blood (hydraulic fluid between arteries/ veins and the motor).

Blackshear teaches the powering of an implanted device using blood pumped from the left heart for the purpose of providing energy to power the cardiac assist device. It would have been obvious to one having ordinary skill in the art at the time of the invention to have used blood pumped from the left heart as the hydraulic pressure source in the Heimes et al. system in order to provide the naturally occurring, readily available energy associated with the pressure of blood ejected from the left ventricle as the hydraulic pressure source for the hydraulic motor,

hence eliminating the need for implantation of a hydraulic pressure source and the expense and maintenance of the associated device components (abstract; col. 2 @ 9-12 and 40-42).

***Statutory Basis***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Fran Oropeza, telephone number is (703) 605-4355. The Examiner can normally be reached on Monday – Thursday from 6 a.m. to 4:30 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Angela D. Sykes can be reached on (703) 308-5181. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306 for regular communication and for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist, telephone number is (703) 308-0858.

Frances P. Oropeza  
Patent Examiner  
Art Unit 3762

*FPO*  
*1/18/04*

*Angela D. Sykes*

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